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# EPA flush with cash for ‘priority’ staff

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The agency is taking an unprecedented approach to furloughs during this latest government shutdown.



EPA headquarters in Washington. Francis Chung/POLITICO

EPA has billions of dollars on hand to stay open through the government shutdown and is using it to fund a new approach to this funding lapse: sending some staffers home while many others stay on to support the president’s priority projects.

In recent weeks, agency staff who work in areas that the Trump administration has deprioritized — like emissions reporting and grants — have been sent home without pay until Congress and the White House iron out their differences on government spending. Others who are working to roll back regulations or approve permits for projects across the country are still coming to work and are getting paid.

This bifurcated furlough model isn’t the way EPA usually handles a lapse in appropriations. And it’s not spelled out in the agency’s shutdown contingency plan, which would have furloughed a majority of the employees who are still working, leaving them in the dark on who will continue working and for how long.

“This selective application across different parts of the agency — to try to put your thumb on the scale of what the agency could do, what it could not do — is an unusual step,” said Stan Meiburg, who held various senior leadership roles over a 39-year career at EPA. “This is very different from past experiences.”

In previous years, most EPA staffers knew which bucket they fell into. A fraction of employees would continue working because they were political appointees, their jobs were deemed vital for public safety or their positions were funded through mechanisms other than annual congressional appropriations. The rest — more than 90 percent of EPA's workforce, on average — would receive an email (<https://subscriber.politicopro.com/article/eenews/2018/12/21/come-to-work-next-week-wheeler-034486>) from the administrator telling them there were enough leftover, or “carryover,” funds to cover their paychecks for the next week or so. Then they would be furloughed once those funds were exhausted.

But this year, most, if not all, employees received a notice upon the start of the shutdown that said they will continue working until “the Agency determines that you are no longer needed to perform exempted activities or that funds are no longer available during the shutdown,” according to copies of the notice reviewed by POLITICO's E&E News. The notice gave no indication of when available funds would dry up.

About 10 days into October, a handful of employees received furlough notices, marking the first wave of what staffers are calling a “phased” furlough approach. Ten days later, nearly three weeks into the shutdown, a second, much larger wave hit.

EPA Administrator Lee Zeldin said during multiple broadcast interviews it was the largest wave so far, with the agency sending furlough notices last Monday to approximately 4,000 employees — roughly a quarter of its pre-shutdown workforce.

“The way that we are able to manage our carryover funding, we are doing this in a way to make sure those employees who are working, have been working, are going to get paid,” Zeldin said during an interview (<https://www.scrippsnews.com/politics/furloughs-roll-out-as-epa-downsizing-aims-to-boost-efficiency-zeldin-says>) with Scripps News on Friday. “Hopefully this shutdown doesn't last forever, but as long as the carryover funding exists, then our employees will get paid.”

EPA staff don't know when the next wave of furlough notices might come or which programs would be affected, according to several staffers who were granted anonymity because they fear retribution. And some say even their senior career supervisors don't appear to know.

The agency “might be a couple weeks or so away from what might be that next round, which would be even larger,” Zeldin said during an interview (<https://www.foxbusiness.com/video/6383537052112>) with Fox Business last week. Zeldin did not say, and EPA's press office did not answer follow-up questions regarding, which staffers and how many would be affected.

“At the political level they are picking and choosing who goes and who stays,” said one EPA employee.

Data from the White House's budget office reveals EPA is sitting on a pile of “carryover” cash, raising legal and ethical concerns about its pick-and-choose approach to furloughs.

## Carryover funds

Unlike some federal agencies, EPA does not solely rely on annual appropriations to cover its costs, which gives the agency some advantages in an appropriations lapse and means the agency can often delay furloughs for some time.

EPA had \$44.9 billion in total budgetary resources available in fiscal 2026, according to an apportionment plan approved by the Office of Management and Budget on Sept. 30. The apportionment, “an OMB-approved plan to use budgetary resources,” according to the budget office's website (<https://apportionment-public.max.gov/>), shows the “funds provided by public law carryover” for EPA use starting Oct. 1.

It's an abnormally high amount for an agency used to operating on an annual budget around \$9 billion (<https://www.epa.gov/planandbudget/budget>). EPA owes its reserves to a wave of programmatic reductions earlier in the year and to the passage in recent years of major spending laws that left it with substantial “walking around money.”

But there are limits to how the money can be spent.

EPA still has to work within the parameters set by Congress when it first authorized the funds. The agency's budget is divided into 14 buckets, or "accounts," since its money comes from a variety of sources, including pesticide registration fees or collected Superfund excise taxes.

A majority of EPA's carryover funds budget — more than \$30 billion — are reserved for state and tribal assistance grants.

Approximately 60 percent of EPA employees' salaries come from the bucket called "Environmental Programs and Management," which covers a range of activities, from IT support to regulatory reviews. OMB apportionment data shows \$2.2 billion were available in total carryover funds. For comparison, EPA's enacted EPM budget for all of last year was \$3.1 billion, according to the agency's budget request to Congress.

But the apportionment information doesn't paint the full picture.

"Even if an overall account has a large balance, those funds still need to be traceable to a specific appropriation permitting the intended activity before they may be spent," said David Super, a professor at Georgetown University Law Center and expert in budget and appropriations law

A more granular breakdown of how EPA plans to divvy up the available funds among programs — which would show if certain activities have more resources than others — is not publicly available.

OMB did not respond to questions about EPA's available carryover funds.

"There is zero uncertainty at EPA about what we are working on and who is advancing these priorities," EPA spokesperson Brigit Hirsch said in a statement. Hirsch did not acknowledge questions about the agency's available carryover funds.

## Who stays, who goes

Despite the amount of funding at its disposal, EPA is making the decision to keep full teams of staff working on some activities — and pay them — while others are sent home.

Lynn Dekleva, deputy assistant administrator in the agency's chemicals office, said a couple of dozen staffers who work on the office's pollution prevention programs received furlough notices, because their work doesn't pertain to regulations or permitting.

But it's "business as usual" for the office employees who work on new and existing chemical reviews, Dekleva told a gaggle of reporters at a U.S. Chamber of Commerce forum Wednesday. Zeldin, heeding industry complaints over delayed approval processes, has made speeding up chemical reviews one of his top priorities (<https://www.eenews.net/articles/5-things-to-know-about-epas-overhaul/>).

EPA staff and outside observers who engage with them say that virtually everyone who is working to undo marquee Biden-era regulations for air pollution, climate change and water quality is still on the job.

Union leaders and multiple employees said they believed no staff at the Office of General Counsel were furloughed as of Friday, while teams at EPA's water and air offices continued to work on priority policies that the agency has promised to deliver at a breakneck pace — and, in many cases, by the end of this year. That includes EPA's final repeals of the so-called endangerment finding for greenhouse gases, which undergirds virtually all climate rules, and its climate rules for motor vehicles.

"Folks who are working on regs and permits — or people who can reach their arms out long enough to say 'what we're doing is essential to that' — they are staying on the clock," said Miles Keogh, executive director of the National Association of Clean Air Agencies.

But other EPA divisions haven't been as fortunate.

Office of Air and Radiation staff who work on greenhouse gas reporting and inventories and on Energy Star, a high-efficiency, product-labeling program, were sent home in a first round of furloughs (<https://subscriber.politicopro.com/article/eenews/2025/10/09/epa-out-of-carryover-cash-sends-first-furlough-notices-00599812>) two weeks ago. Those were programs EPA was working to terminate anyway, beginning with the dissolution of the offices (<https://subscriber.politicopro.com/article/eenews/2025/05/05/epa-reorganization-signals-end-to-climate-work-00326131>) responsible for administering them with no disclosed plans to relocate them elsewhere in the agency. EPA has also proposed ending requirements that heavy-emitting industries report their heat-trapping emissions annually, with a final rule expected by the end of the year.

Then last Monday and Tuesday grantees under several EPA programs found they could no longer reach their grant managers with auto-responses blaming the appropriations lapse.

Several staffers handling Freedom of Information Act requests have now been furloughed as well, saying they're out of the office because of the shutdown, according to bounceback emails received by E&E News.

In addition, EPA's Office of Inspector General will "neither update nor monitor its social media accounts" due to the spending stop, according to a post on the social media site X ([https://x.com/EPAoig/status/1981711091399790784?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet](https://x.com/EPAoig/status/1981711091399790784?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet)) last Friday. The internal agency watchdog will not update its website (<https://www.epa.gov/office-inspector-general>) either "until full operations resume."



A spokesperson for the OIG declined to say whether it had opened any investigations into whether EPA had moved any funding between budget accounts to cover expenses during the lapse or whether the agency was taking appropriate steps to avoid spending money it didn't have.

"In keeping with our long-standing policy, we do not confirm the existence of or otherwise comment about investigations," said Kim Wheeler, a spokesperson for the office, last week.

Asked Monday how many employees have been furloughed at the EPA watchdog and if its investigations have stopped during the shutdown, Wheeler's account sent an automatic reply saying she would be out of the office for the duration of the appropriations lapse.

Hirsch, the EPA spokesperson, said during the appropriations lapse the agency had "been intentional and aggressive in establishing a structure to ensure EPA is focused on statutory obligations and Presidential priorities, not the overreach of the previous administration."

## Shutdown plan switch-ups

EPA's contingency plan ([https://www.epa.gov/system/files/documents/2025-09/epa-contingency-plan-9\\_29\\_25.pdf](https://www.epa.gov/system/files/documents/2025-09/epa-contingency-plan-9_29_25.pdf)) for an appropriations lapse — updated in late September — showed that 1,734 agency staff would work through a government shutdown. They're split about evenly between people who perform legally defined "essential" work — including Zeldin himself — and those whose positions are funded by dedicated taxes and fees.

More than 1,734 EPA staff members are still working.

Thanks to carryover funding, Zeldin said the agency has been able to avoid implementing the contingency plan in full. As "the money starts to run out," furloughs will be sent out, he said during an interview with Newsmax (<https://www.youtube.com/watch?v=MfBjBm4t070>) over the weekend.

"When we woke up on Oct. 1, it's not like we were at a total lapse. Total lapse of funding at EPA is an 89 percent furlough," Zeldin continued.

EPA's contingency blueprint says nothing about any plans for a gradual phase-down of staff, from the pre-shutdown 15,166 employees it said it had in late September to the skeleton crew of workers who will never be furloughed and who represent only a little over 10 percent of the total workforce.

The plan specifies that EPA will base furlough decisions in part on what personnel are needed to maintain progress on administration policy priorities.

"An agency may 'exempt' activities from the shutdown if the activities have funds available and EPA determines the activities to be priorities," the plan states.

This creation of a two-part test for exempted employees — that they should both be funded and engaged in activities that "EPA determines" to be "priorities" — is new.

An E&E News analysis found none of the agency's 13 most recent (<https://www.epa.gov/lapse/agency-contingency-plans-event-lapse-appropriations>) contingency plans available online — approved between December 2011 and March 2025 — mentioned "priorities" when defining exempted activities.

"You can have people work on your priorities, but you can't choose who you keep and who you let go based on your substantive priorities without complying with the statute on priority for retention," said Super, the Georgetown law professor.

## Legal questions

Some former EPA officials who guided the agency through past shutdowns and appropriations lapses said they believed at the time that they were bound to apply furloughs evenly across the agency, rather than to shield staff working on priority projects.

"I don't remember seeing in any contingency plan ever something that said our contingency plan is to basically keep working on the things that we think are most important to let everything else go," Meiburg said.

"The only thing I can offer is the contrast to 2013," said Joe Goffman, referring to the 17-day government shutdown that occurred early in former President Barack Obama's second term and resulted in furloughs for nearly all EPA staff.

At the time, EPA's air office, where Goffman served as senior counsel, was working on the first proposed rule to curb greenhouse gas emissions from the power sector.

"Nobody working on the Clean Power Plan was exempted or excepted," said Goffman. "And that was very much a critical time, with tight presidential deadlines." The Obama administration ultimately issued a proposed version of its flagship climate rule the following June.

But while former officials agree that the Trump EPA's approach is unusual, there's no consensus that it is illegal.

The Antideficiency Act places a strict prohibition on agencies spending money they don't have and on employees working for free. But it may not stipulate how they spend money they do have.

“I think there is flexibility within the agency to manage its resources in a setting where there is not sufficient resources to operate the entire agency,” said Kevin Minoli, a partner at law firm Alston & Bird who previously served as EPA acting general counsel.

In fiscal 2013, the year that immediately preceded the October 2013 government shutdown, EPA faced a \$472 million budget shortfall. It chose to compensate for that by furloughing all members of its staff without pay for 47 hours — or about six work days — Minoli said. But it also could have chosen to furlough a subset of employees for longer.

“In the past, when the agency has faced budget shortfalls, it is chosen to furlough the agency at the same time and not choose between programs,” Minoli said. “And that was an intentional choice, but it was always a choice.”

Agencies may not move money between accounts without notifying Congress, which House and Senate appropriators say EPA has not done. But appropriations laws might be written broadly enough to give the agency ample latitude to pick and choose which positions funded under its various accounts it furloughs when budgets dwindle — at least in the short term.

But the Antideficiency Act isn’t the only statute that governs how agencies spend money or make staffing decisions.

“If they’re furloughing people when there’s money to spend on their salaries, that’s not per se a violation of the Antideficiency Act. It may be an appropriations violation of some kind,” said Minoli.

Super, the Georgetown law professor, said agency priorities do not serve as “adequate grounds” to furlough employees so long as the money is available.

“If it has sufficient funds to continue to pay its full staff, at least for now, it would violate other Civil Service laws, particularly 5 U.S. Code 3502, if it chose whom to keep paying based on subjective preferences among assigned work activities,” Super said.

*Reporter Kevin Bogardus contributed.*

*Reach the reporters on Signal at eborst.64 and jchemnick.01.*

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